From: Will Grzanich
To: Microsoft ATR
Date: 1/23/02 1:19pm
Subject: Microsoft Settlement

Dear Judge,

The proposed settlement is a bad one; please reject it and have the DoJ and the states go back and draft something that will address the facts found in the District court case.

A unanimous US Court of Appeals agreed that Microsoft had illegally kept its monopoly position by preying on other software developers and computer manufacturers. The bottom line is that Microsoft operated illegally, and any settlement or resolution of this case should make sure the company cannot continue its anticompetitive behavior. Unfortunately the proposed solution does not do this. In many ways, it actually reinforces Microsoft's monopoly, and does nothing to restrain Microsoft from acting illegally again in future markets.

  Indeed, Microsoft has already shown they intend to continue to piggyback off their illegally obtained operating system monopoly to crush more markets. As an example, look at the "give away" of millions of dollars of development effort in their Media Player, which is unnecessarily "integrated" into WindowsXP - and is targeted at the RealPlayer product line, in order to crush it, in the same way they did the Netscape Browser. Microsoft, unlike its competitors, simply rolls the development cost into their illegally obtained monopoly operating system, and undercuts the competition unfairly. Yet the proposed settlement does not address preventing this sort of monopolistic behavior at all. Remember, developing a media player, a browser and other software costs money, and Microsoft leverages their monopoly to mask these costs while smashing competition unfairly. The Circuit court in it s 7-0 decision, and lower courts found this "bundling" illegal and monopolistic, yet the settlement does not address this in any sort of meaningful fashion: it allows Microsoft to tightly integrate and bundle its media player, its web browser, and myriad other applications into the Windows Operating System, instead of competing freely against external applications.

Also, the proposed settlement contains no provisions to remedy the unlawful monopolization of the operating system; nothing that will produce competition. Remember that the Circuit court ordered that a remedy must "unfetter the market from anticompetitive conduct... [and] .. terminate the illegal monopoly". the proposed settlement does nothing of the sort. Its attempt to open the "API" (programming interface) of the Windows operating system will merely reinforce the monopoly, not terminate it as the court called for. Also opening the API is not enough: Microsoft plans only to open a mere a subset.

Complete and full disclosure of ALL the source-code is the only
"opening" that would suffice to terminate the Microsoft monopoly.

Finally, the proposed settlement does nothing at all to address the
issue of effective remedy along side enforcement. the proposed
penalties are ludicrous - an extension of terms that they have already
violated is hardly a punishment. Fiduciary penalties must be applied,
as well as structural ones. Also, the solutions proposed for
"competition" are heavily dependent upon Original Equipment
Manufacturers for implementation - the same OEMs who are partners and
part of Microsoft's business plans (Such as Dell and Compaq).

In sum, this settlement is wholly inadequate, and should be rejected
and the DoJ and the States should be directed to follow the rulings of
the Circuit Court and lower courts when crafting a settlement, instead
of ignoring the findings of fact and law, and currying favor with an
unrepentant lawbreaking monopolist.

Regards,

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